CONSCIENTIOUS OBJECTORS AND THE NATURALIZATION LAWS

In re *Hansen, 148 F. Supp. 187 (D. Minn. 1957)*

An alien petitioned for naturalization seeking to come under the exception provided for conscientious objectors, allowing exemption from taking that part of the oath of allegiance requiring performance of military service. Petitioner claimed to fall within the classification of conscientious objection by reason of his "religious training and belief." The court held that petitioner qualified under the exemption, treating "religious training and belief" as a single concept and ruling that a personal religious code based on a relation to a Supreme Being is sufficient, although not derived from the formal religious tenets of the church to which he belonged.

The Immigration and Nationality Act of 1952[1] (McCarran-Walter Act) provides exemption from a part of the oath in naturalization proceedings for conscientious objectors who can satisfy the test by any showing that they are "opposed to bearing arms in the Armed Forces of the United States by reason of religious training and belief."[2] This is in effect a codification of the majority holding in *Girouard v. United States*,[3] wherein the earlier holdings of *United States v. Schwimmer*,[4] *United States v. Macintosh*,[5] and *United States v. Bland*[6] were overruled. The *Girouard* decision, purporting to interpret the intent of Congress as expressed in the statutory oath, in effect accepted the rationale of the dissents of Justice Holmes[7] and Chief Justice Hughes[8] in the earlier cases. Mr. Justice Douglas, speaking for the majority said:

> The oath required of aliens does not in terms require that they promise to bear arms. Nor has Congress expressly made any such finding a prequisite to citizenship. To hold that it is required is to read it into the act by implication. But we could not assume that Congress intended to make such an abrupt and radical departure from our traditions unless it spoke in unequivocal terms.[9]

The 1952 Act specifically defines "religious training and belief" as "an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include

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[1] 66 STAT. 163 (1952), 8 U.S.C.A. §1101-1503 (1953).
[2] 66 STAT. 258 (1952), 8 U.S.C.A. §1448 (1953).
[3] 328 U.S. 61 (1946).
[4] 279 U.S. 644 (1929).
[5] 283 U.S. 605 (1931).
[6] 283 U.S. 636 (1931).
[7] United States v. Schwimmer, 279 U.S. 644, 653 (1929).
[9] Girouard v. United States, 328 U.S. 61, 64 (1946).
[8] United States v. Macintosh, 283 U.S. 605, 627 (1931).

essentially political, sociological, or philosophical views, or a merely personal moral code."[10]

The definition, due to the recent incorporation of this language in the statute, has to date received scant consideration in its application to the naturalization area.[11] The Universal Training and Service Act of 1948,[12] containing identical language, has been examined in a considerably greater number of cases. Under that Act the courts' pronouncements are definitely at variance with the views taken in the *Hansen* case. The courts, adhering to the strictest statutory interpretation, deny that the right of a registrant to exemption under the law "can rise above the tenets of his faith as taught by the church through which he finds personal expression."[13] Again, in *United States v. Hein*,[14] the defendant "only sought to show that he belonged to a church that would support him in his own individual belief whether he believed in military service or whether he was a conscientious objector. If the board should allow exemption for one who is a member of such a church then the whole purpose of the statute would fail and each case would be determined on whether or not the individual himself was a conscientious objector. That would open the door to chaos and fraud. . . ."[15] Or again, where defendant based his belief on "thinking during the past 19 years,"[16] although he claimed "a basis for his beliefs in the Methodist Church which he attended as a youth," the court demanded something of a more substantial nature and found that such evidence would be a basis for denial of a claim as a conscientious objector.[17] The courts in these cases are seeking an objective standard, through church affiliation, in hopes of avoiding the problems of subjectivity inherent in the whole area of sincerity of belief.[18]

Standing apart from the above cases and considering the naturalization proceedings as distinguished from nationals seeking classification under The Universal Training and Service Act is In re *Nissen*.[19] This was a petition by a member of the Lutheran Church whose "own belief rather than the doctrine of the church" caused him to refuse to bear

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[10] 66 STAT. 259 (1952), 8 U.S.C.A. §1448 (1953).

[11] *In re* Hansen, 148 F. Supp. 187 (D. Minn. 1957); *In re* Nissen, 146 F. Supp. 361 (D. Mass. 1956); *contra,* Jost v. United States, 117 Cal. App. 2d 379, 256 P.2d 71 (1953), *rvsd.,* 347 U.S. 901 (1954) (on confession of error by the United States).

[12] 62 STAT. 604, 612-613 (1948), 50 U.S.C. App. §451,456.

[13] Roberson v. United States, 208 F.2d 166, 169 (10th Cir. 1953).

[14] 112 F. Supp. 71 (N.D. Ill. 1953).

[15] *Id.* at 75.

[16] United States v. Lime, 121 F. Supp. 750, 758 (D.N.J. 1954).

[17] *Id.*

[18] Selby v. United States, 250 F.2d 666 (9th Cir. 1957).

[19] 138 F. Supp. 483 (D. Mass. 1955), *reconsideration granted,* 146 F. Supp. 361 (D. Mass. 1956).

arms. In the initial hearing, the statutory requirements were defined as more than "a course of self instruction in the Bible in a sympathetic atmosphere."[20] However, on reconsideration of the case the necessity of training[21] as a basis of belief was abandoned. "As far as Congress was thinking of training it regarded it as meaning no more than individual experience supporting belief; a mere background against which sincerity could be tested."[22] In the alien naturalization cases the courts are moving away from the rigid formula invoked in the Universal Training cases and toward a flexible criteri of "honest" conviction.

The determinations of the courts in both the naturalization and induction cases reflect the pervasive nature of freedom of religion as a motivating factor for the decisions. However, the principle case and the *Nissen* case, dealing with naturalization, exhibit a tendency toward a liberal construction of the statutory language, even though an alien clearly has no constitutional right to citizenship[23] and does not fall within the protection of the First Amendment.[24] The naturalization law incorporates the attitude of the *Girouard* case that aliens should be treated the same as citizens in this matter and not excluded due to their refusal to bear arms as the privilege of conscientious objection is afforded to citizens. The Universal Training and Service cases, on the other hand, strictly construe that statute despite the immediate coverage applicable to citizens. The current trend might potentially lead to the anomalous situation of privileges being allowed aliens petitioning for naturalization that are denied citizens seeking classification under the induction laws. This duality of standard under the two different statutes, however, presents a situation where the liberality found in the naturalization of a young alien fit for military duty may come back to haunt a court taking the conservative approach in the Universal Training and Service cases. The explanation may lie in the proximity to the actuality of combatant service—causing the courts to demand greater proof of sincerity of belief in the case of a potential combatant than that of an alien, who may not be subject to military service. In the instant case, the petitioner was fifty-nine years of age, and thus, practically no longer subject to military service even if he had been a citizen.

Based on the holdings of In re *Nissen* and In re *Hansen*, the conclusion is inescapable that the law in those alien naturalization cases involving religious ideologies is drawing as close as the statute permits to

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[20] 138 F. Supp. 483, 485 (D. Mass. 1955).

[21] Definition of training under the Selective Service Act of 1940 (pre-Girouard): United States *ex rel.* Phillips v. Downer, 135 F.2d 521 (2d Cir. 1943), and Berman v. United States, 156 F.2d 337 (9th Cir. 1946).

[22] 146 F. Supp. 361, 363 (D. Mass. 1956).

[23] United States *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537 (1950); Turner v. Williams, 194 U.S. 279 (1904).

[24] U.S. CONST., Amend. I, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

the Holmesian philosophy: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those that agree with us but freedom for the thought that we hate. I think that we should adhere to that principle with regard to admission into, as well as life within this country."[25]

The impact of the principal case in the naturalization field will depend on the continued acceptance of its underlying policy considerations. The court demonstrates less concern with immediate precedent than with propriety; less involvement with individual words than with overall statutory purpose; less emphasis on narrow interpretation than broad ideals. It is a reflection of American concepts in an area not literally covered, but strongly influenced by the spirit of national traditions.

Phillip E. Stebbins

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[25] United States v. Schwimmer, 279 U.S. 644, 654-655 (1929).